In the
Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-5933

IN RE JEROME P. TROY

BRIEF OF THE MASSACHUSETTS BAR ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinions Below

The opinion of the Court of Appeals for the First Circuit (App. B of Petition) is reported in 505 F.2d 746 (1974); opinion of the United States District Court for the District of Massachusetts is unreported (App. A of Petition); opinion of the Supreme Judicial Court of Massachusetts is reported in 1973 Massachusetts Advance Sheets 1107, 306 N.E. (2d) 203.

Jurisdiction

In filing this petition for a writ of certiorari petitioners have involved the jurisdiction of this Court under Title 28, U.S.C. Section 1254 (1).

Questions Presented

1. Whether the Courts below properly determined that the petitioner was afforded adequate notice and hearing before the Massachusetts Supreme Judicial Court to satisfy the due process guarantees of the Fourteenth Amendment to the United States Constitution.

2. Whether the state court determination that it possesses the authority to impose judicial and bar discipline is final and is not subject to review by the federal courts.

3. Whether the Courts below properly determined the evidence was sufficient to establish the want of fair, private and professional character to warrant his disbarment from membership in a federal court.

Constitutional Provision Involved

Fourteenth Amendment to the United States Constitution.

Statement

This matter is before this Court on an appeal of the decision of the Court of Appeals for the First Circuit affirming an order of the United States District Court for the District of Massachusetts disbarring the petitioner from the practice of law in that Court.

On September 30, 1971 a petition relating to the courtroom conduct of the petitioner, who was then the presiding justice of the Municipal Court of the Dorchester District, was filed with the Chief Justice of the District Courts of Massachusetts. At the conclusion of hearings conducted by the Grievance Committee of the District Courts, a report to the justices of the Supreme Judicial Court of Massa-

chusetts was submitted by the Chief Justice of the District Courts.

On the basis of this report, the Boston Bar Association filed a petition urging the Supreme Judicial Court to take appropriate action. The Boston Bar Association was subsequently authorized to undertake further investigations, and on November 2, 1972 the Boston Bar Association filed an Information urging the Court to take appropriate action in the public interest.

Subsequently, the scope of the inquiry was broadened to include investigation of non-judicial conduct involving personal and business activities, and on March 29, 1973 counsel appointed by the Court to conduct the proceedings filed an amended Information in substitution for the initial Information of the Boston Bar Association.

The hearings before the full bench of the Supreme Judicial Court were based solely upon the allegations contained in the amended Information.

On July 26, 1973 the Supreme Judicial Court entered an order disbarring the petitioner from the practice of law in the courts of the Commonwealth and enjoined him from exercising his duties as a judge.

Notice of the state disbarment order was brought to the attention of the District Court by the Massachusetts Bar Association. On March 22, 1974 the District Court entered an order temporarily suspending the petitioner from the practice of law and directed him to show cause why the suspension should not be made permanent. On April 5, 1974 the hearing was held by a three-judge panel of the District Court, and on June 28, 1974 an order was entered disbarring the petitioner.

On November 1, 1974 the Court of Appeals of the First Circuit, per curiam, affirmed.

Argument

I. The Petitioner Was Afforded Adequate Notice and Hearing Before the Supreme Judicial Court of Massachusetts To Satisfy Due Process Guarantees of the Fourteenth Amendment to the United States Constitution.

The petitioner asserts that the state proceeding was wanting in due process and alleges that he was not afforded prior notice that the allegations which formed the basis of the hearings might result in his disbarment, and therefore, under the principles enunciated by this Court in *Selling* v. *Radford*, 243 U.S. 46 (1916) the federal courts should not give recognition and effect to state judgment.

While an order of disbarment from a state court does not result in automatic disbarment from membership to the bar of a federal court, this court in *Selling* v. *Radford*, supra, has stated that it has the responsibility to give recognition and effect to the state judgment unless certain enumerated conditions were found to exist in the state procedure.

This Court in *Selling* v. *Radford*, supra, at p. 51 declared:

> "We should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the record, one or all of the following conditions should appear: 1. That the state procedure from want to notice or opportunity to be heard was wanting in due process; 2. That there was such an infirmity of proof as to facts found to have established the want of fair, private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or

> 3. That some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do."

It is clear that the facts contained in the record below totally refute the petitioner's contention of lack of notice. The Court of Appeals found upon an examination of the Information, pleadings and pre-trial motions that the petitioner had actual notice of the possibility of disbarment prior to the state hearing.

In its per curiam opinion, the Court of Appeals (App. B Petition, pp. 17-18) stated the facts apparent on the record demonstrated actual notice:

> "Not only was the proceeding initiated by the Bar Association, but the amicus curiae 'The People First' in the petition to intervene and the motion to present arguments and briefs as amicus, specifically sought disbarment and described the Bar Association petition as being based in part on its earlier letters to the bar requesting investigation and possible disbarment. Finally, in a pre-hearing motion to dismiss, filed by the appellant, the reasons stated in support of the motion included a claim that "the allegations of the amended petition, even if proven as true, would not warrant disbarment, suspension or censure. It is clear that the appellant was on notice as to the possible ramifications of an adverse finding. The District Court appropriately relied upon the state court procedure."

It is significant that the petitioner points to no evidence contrary to this finding.